

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-563-2012

Date of decision: 12.1.2015

Ajinderpal Singh

..... Petitioner

Versus

Rajiv Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Satinder Khanna, Advocate for the petitioner.

Mr. Sham Lal Bhalla, Advocate for respondent No. 1.

R.P. NAGRATH, J.

Prayer made in the instant petition filed under Article 227 of the Constitution of India is for quashing of the order dated 20.10.2011 (Annexure P-1) passed by the trial Court whereby amendment of the plaint has been allowed.

2. Plaintiff/respondent No. 1-Rajiv Kumar has filed civil suit in January, 2002 seeking possession of the land measuring 500 sq. yards on the basis of title. Originally one Bhan Singh, adopted son of Ram Singh was owner of the plot in question. Bhan Singh, aforesaid entered into an agreement to sell dated 1.10.1982 in favour of Kanta Rani and the

possession was also delivered to her. Kanta Rani, aforesaid further executed an agreement to sell dated 6.11.1992 in favour of plaintiff-respondent No. 1. Since the land was still entered in the name of Bhan Singh aforesaid, in the revenue record, the plaintiff had to pay a premium of ₹ 15,000/- to Bhan Singh and Kanta Rani and they executed the sale deed of plot in question in favour of plaintiff-respondent No. 1 on 21.12.1992. The plaintiff-respondent No. 1 thus claims himself to be owner in possession of the disputed property claiming to have purchased the property in question from Bhan Singh.

3. On 1.1.1999, petitioner-defendant No. 1 forcibly dispossessed the plaintiff-respondent No. 1 therefrom. In the original pleadings, respondent No. 1 had stated the date of agreement to sell as 6.11.1992 instead of 13.11.1992 and thus, applied to amend the plaint accordingly.

4. Learned trial Court after seeking reply from the petitioner allowed the application on 20.10.2011, subject to payment of ₹ 1000/- as costs.

5. I have heard learned counsel for the parties and also gone through the impugned order as well as the paper-book.

6. Learned counsel for the petitioner fairly submitted that the suit was instituted in January, 2002 and, therefore, the un-amended provisions of Code of Civil Procedure (CPC) would be applicable. The amended provision of Order VI Rule 17 CPC came into force w.e.f. 1.7.2002 whereas the suit was filed in January, 2002. In **Chander Kanta Bansal** Vs. **Rajinder Singh Anand**, (2008) 5 SCC 117, Hon'ble

Supreme Court held as under:-

“.....As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent

Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial.....”

7. In **Chander Kanta Bansal's case (supra)** Hon'ble Supreme Court further observed as under:-

“.....the suit filed in the year 1986 is for a right of passage between two portions of the same property dragged for a period of 21 years. In spite of long delay, if acceptable material/materials placed before the court show that the delay was beyond their control or diligence, it would be possible for the court to consider the same by compensating the other side by awarding cost. As pointed out earlier, when she gave evidence as D.W.1, there was no whisper about the written document/partition between the parties. On the other hand, she asserted that partition was oral. Now by filing the said application, she wants to retract what she pleaded in the written statement, undoubtedly it would deprive the claim of the plaintiff. We are also satisfied that she failed to substantiate

inordinate delay in filing the application that too after closing of evidence and arguments. All these aspects have been considered by the High Court. We do not find any ground for interference in the order of the High Court, on the other hand, we are in entire agreement with the same.”

The facts of that case were quite different and thus the judgment cannot support the contention of the petitioner.

8. In **Pankaja & another Vs. Yellappa (D) by Lrs. & others, 2004(6) SCC 415**, the suit was instituted on 17.9.1994 and in the same year written statement had been filed by the defendants. The amendment in that case was applied by the plaintiffs on 27.7.2000. That was a suit for permanent injunction restraining the defendants from interfering in the marked portion of the suit property and for possession of specific portion. It was stated that during the pendency of the suit the respondent in violation of the court order further encroached into suit property to an extent of 15' x 15' and, therefore, the appellants sought an amendment of the plaint seeking possession of the said encroached area also. The plea in the original written statement was that without seeking the declaration of title, suit was not maintainable for injunction and possession. The plaintiffs realizing that a prayer for declaration on the facts of the case was essential moved an application for amendment of the plaint. Hon'ble Supreme Court held as under:-

“So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no

two opinion that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

16. Factually in this case, in regard to the stand of

*the defendant that the declaration sought by the appellants is barred by limitation, there is dispute and it is not an admitted fact. While the learned counsel for the defendant-respondents pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the appellants in this case ought to have been done within 3 years when the right to sue first accrued, the appellant-plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years, therefore, according to them the prayer for declaration of title is not barred by limitation, therefore, both the courts below have seriously erred in not considering this question before rejecting the prayer for amendment. In such a situation where there is a dispute as to the bar of limitation this Court in the case of **Ragu Thilak D. John Vs. S. Rayappan & Ors.**¹ has held :-*

"The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation

1 2011 (2) SCC 472

being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

9. In **Surender Kumar Sharma Vs. Makhan Singh, 2009 (10) SCC 626**, Hon'ble Supreme Court found nothing to hold any reason that only because there was some delay in filing the application for amendment of the plaint, such a prayer for amendment cannot be allowed.

10. Learned petitioner's counsel vehemently contended that the plea with regard to the plaintiff-respondent No. 1 being in possession of certain agreements including agreement dated 13.11.1992 was already taken in the written statement and despite that plea the plaintiff did not file any such application at the initial stages. I find that it was not at all the petitioner's case that plaintiff-respondent No. 1 placed on record any other agreement dated 6.11.1992 on record, in support of his case. There is no question of any change in the nature of suit already filed by the plaintiff. The amendment seeks to correct the date of agreement as the mistake occurred because of the typographical mistake. The case was still at the initial stage of evidence of the plaintiff-respondent No. 1 as it was stated that the mistake of date was discovered while the affidavit of plaintiff in support of his case, to be tendered in evidence was being prepared. In case, the petitioner-defendant No. 1 is in possession of any other agreement dated 6.11.1992, that can be put to plaintiff-respondent No. 1 when he appears in the witness box or the petitioner-defendant No. 1 may produce any such document in his evidence in order to rebut the case but merely on the ground that application for amendment of plaint

has been filed with some delay, the amendment cannot be refused. The learned trial Court in the impugned order observed as under:-

“The applicant/plaintiff has already placed on record the agreement to sell executed by Kanta Rani which is dated 13/11/92. On perusal of the plaint it is found that the plaintiff has mentioned the date as to be 6/11/92 in the para number 2 and para number 4 of the plaint. This has seems to have been committed at the time of typing of the plaint. No doubt the trial has commenced in this case but the amendment is minor in nature and is essential for reaching the just decision of the case. The amendment will and no the manner change the nature of the suit rather it would clear the ambiguity. No jeopardy would occur to the defendant if the amendment is allowed and the defendant can be compensated in terms of costs.....”

11. The impugned order passed by the trial Court is not illegal or perverse rather the amendment was essential. There is no scope of interference.

12. Dismissed.

January 12, 2015
rishu

(R.P. NAGRATH)
JUDGE